

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
City of Decatur Morgan County Sanitary Landfill)
500 Landfill Drive)
Decatur, Morgan County, Alabama)
Solid Waste Disposal Permit No. 52-03)
General NPDES Permit No. ALG160078)

Order No. 19-XXX-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the City of Decatur-Morgan County Sanitary Landfill (hereinafter “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17 as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended.

STIPULATIONS

1. The City of Decatur (hereinafter “Permittee”) operates a municipal solid waste landfill, known as the City of Decatur-Morgan County Sanitary Landfill (hereinafter “landfill”) in Decatur, Morgan County, Alabama, which is the subject of this Consent Order.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17 as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA.
4. Pursuant to § 22-22A-4(n) Ala. Code, as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

DEPARTMENT'S CONTENTIONS

5. On March 7, 2014, the Department issued renewal Solid Waste Disposal Permit Number 52-03 to the Permittee for the operation of the landfill located at 500 Landfill Drive, Decatur, Morgan County, Alabama.

6. On December 13, 2016, the Department issued a renewal of National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. ALG160078 (hereinafter "the NPDES General Permit") with an effective date of February 1, 2017, establishing limitations on the discharges of pollutants from such point sources, designated therein as outfall numbers DSN001-1, DSN003-1, and DSN004-1, into Trinity Branch, a water of the state.

7. On September 10, 2018, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following concerns:

A. ADEM Admin Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. Department personnel documented that the municipal solid waste (MSW) disposal area was not covered at the close of the previous day's operation, which resulted in an excessive amount of waste being exposed.

B. ADEM Admin Code r. 335-13-4-.22(1)(b) and Section III.J. of the facility permit requires that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the MSW cell at the landfill was not confined to a small area.

C. ADEM Admin Code r. 335-13-4-.22(2)(b) and Section III.X of the facility permit requires that litter shall be controlled within the permitted facility. Litter was observed adjacent to the MSW active working face and flagging waste was observed at the vehicle unloading area.

D. ADEM Admin Code r. 335-13-4-.23(1)(a)1. and Section III.H. of the facility permit requires that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation. The construction/demolition (C/D) disposal area was not

covered at the conclusion of the previous week's operation, which resulted in an excessive amount of waste being exposed.

E. ADEM Admin Code r. 335-13-4-.23(1)(c) and Section III.J. of the facility permit requires that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the C/D cell at the landfill was rather large and not confined to a small area.

F. ADEM Admin Code r. 335-13-4-.23(2)(b) and Section III.X of the facility permit requires that litter shall be controlled within the permitted facility. Litter and flagging was observed adjacent to the C/D working face.

8. On September 20, 2018, the Department sent a Warning Letter to the Permittee addressing the concerns noted above.

9. On October 19, 2018, Department personnel received an email from the Permittee indicating that the issues documented during the September 10, 2018, inspection had been corrected.

10. On October 29, 2018, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. Department personnel documented that the MSW disposal area was not covered at the close of the previous day's operation, which resulted in an excessive amount of waste being exposed.

B. ADEM Admin Code r. 335-13-4-.22(1)(b) and Section III.J. of the facility permit requires that all waste shall be confined to as small an area as possible. Furthermore, in accordance with of Permit No. 52-03, the Decatur Morgan County Regional Landfill has been approved for two working faces; one for the MSW disposal area and one for the C/D waste disposal. However, two active disposal areas were noted in the MSW portion, thus waste was not confined to as small an area as possible.

C. ADEM Admin Code r. 335-13-4-.22(2)(b) and Section III.X of the facility permit requires that litter shall be controlled within the permitted facility. Litter was noted scattered in the MSW portion of the landfill.

D. ADEM Admin Code r. 335-13-4-.23(1)(a)1. and Section III.H. of the facility permit requires that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each week's operation. Department personnel documented that the C/D disposal area was not covered at the close of the previous week's operation, which resulted in an excessive amount of waste being exposed.

E. ADEM Admin Code r. 335-13-4-.23(1)(c) and Section III.J. of the facility permit requires all waste shall be confined to as small an area as possible. Due to a lack of cover, there was a large C/D disposal area exposed during the inspection.

11. On November 30, 2018, the Department issued a Notice of Violation to the Permittee addressing the violations noted above.

12. On December 26, 2018, Department personnel received a response from the Permittee indicating that the issues documented during the October 29, 2018, inspection had been corrected.

13. On February 7, 2019, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.21(1)(d) and Section II.D. of the facility permit require that the Permittee operate the disposal facility in such a manner that there will be no water pollution or unauthorized discharge. In addition, Section I.F. of Solid Waste Permit No. 52-03 states that the Permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or an unplanned sudden or nonsudden release of contaminants (including leachate and explosive gases) to air, soil, groundwater, or surface water, which could threaten human health or the environment. Ala. Code §22-22-9(i)(3), (2006 Rplc. Vol.) and ADEM Admin. Code r. 335-6-6-.03 also require that no person shall discharge pollutants into waters of the state without first having obtained a valid NPDES Permit or coverage under a valid General NPDES Permit. NPDES General Permit ALG160078 does not allow for the

discharge of leachate or condensate. Leachate was observed overflowing from a manhole on the northwestern portion of the landfill. Also, a small amount of condensate was leaking from a gas condensate pipe. The leachate and condensate was flowing through facility drainage ditches into Trinity Branch, a water of the state.

B. ADEM Admin Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit states that a minimum of six inches of compacted earth or alternative cover material shall be added at the conclusion of each day's operation to control disease vectors, fires, odors, blown litter and scavenging. The MSW disposal area was not covered at the close of the previous day's operation, which resulted in an excessive amount of waste being exposed.

C. ADEM Admin. Code r. 335-13-4-.22(2)(b) and Section III.X. of the facility permit requires that litter shall be controlled within the permitted facility. Litter was noted scattered around the MSW portion of the landfill.

D. ADEM Admin Code r. 335-13-4-.23(1)(a)1. and Section III.H. of the facility permit states that a minimum of six inches of compacted earth or alternative cover material shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The C/D disposal area was not covered at the close of the previous week's operation, which resulted in an excessive amount of waste being exposed.

E. ADEM Admin Code r. 335-13-4-.23(2)(b) and Section III.X. of the facility permit requires that litter shall be controlled within the permitted facility. Litter was noted scattered in the C/D portion of the landfill.

14. On February 13, 2019, the Department issued a Notice of Violation to the Permittee addressing the violations noted above.

15. On March 15, 2019, Department personnel received a response from the Permittee indicating that the issues documented during the February 7, 2019, inspection had been corrected.

16. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed

compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Permittee failed to comply with certain provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 52-03 regarding landfill operations. The Department noted unauthorized discharges of fluids to groundwater, surface water and/or soils.

B. **THE STANDARD OF CARE:** The Permittee failed to employ an appropriate standard of care to ensure compliance with certain solid waste disposal requirements and with the Alabama Water Pollution Control Act.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Permittee has realized an economic benefit as a result of the violations noted.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is unaware of any efforts employed by the Permittee to mitigate potential effects upon the environment that may have been created as a result of the violations listed.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee does not have a history of similar violations.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

G. **OTHER FACTORS:** It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes

is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

17. The Department neither admits nor denies the Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

18. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18), as amended, as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. That, not later than **forty-five days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$22,400.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Permittee's name, address and the ADEM Administrative Order number of this action.

B. That, not later than **thirty days** after issuance of this Order, the Permittee shall submit a corrective action plan prepared by a Professional Engineer addressing the violations relating to unauthorized discharges of leachate. The plan should detail what has been done to correct the issues noted and include preventative maintenance measures which will ensure the noted violations do not recur.

C. That immediately, upon the issuance of this Order and continuing each and every day thereafter, the Permittee shall comply with all applicable provisions of ADEM Admin Code div. 335-13 and Solid Waste Disposal Permit Number 52-03, and ADEM Admin Code div. 335-6-6 and NPDES General Permit Number ALG160078.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

H. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the

Department, or such other enforcement action as may be appropriate; the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The parties agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF DECATUR MORGAN COUNTY
SANITARY LANDFILL

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

(Date Signed)

(Date Signed)

Attachment A
 Decatur Morgan County Sanitary Landfill
 Decatur, Morgan County
 Solid Waste Disposal Permit No. 52-03
 NPDES Permit ALG160078

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to prevent unauthorized discharge or water pollution	1	\$7,000	\$3,000	\$0	
Failure to properly maintain cover on landfill	6	\$6,000	\$3,000	\$0	
Failure to maintain litter control	5	\$2,250	\$750	\$0	
Failure to properly confine waste to a small area	4	\$4,000	\$2,000	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		\$19,250	\$8,750	\$0	\$28,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$5,600
Total Adjustments (+/-) <i>Enter at Right</i>	-\$5,600

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$28,000
Total Adjustments (+/-)	-\$5,600
FINAL PENALTY	\$22,400

Footnotes * See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.